The Test Mr. Justice Frankfurter Failed, P. 4

How Our Military Tripped Themselves in Outer Space, P. 2; Celebrezze Fogs Up The Fallout Picture, P. 3

I. F. Stone's Weekly

VOL. X, NO. 32 SEPTEMBER 10, 1962 WASHINGTON, D. C. 15 CENTS

Cuba Is The Spark That Could Set Off The Conflagration

Good sense, international law and the moral considerations we always claim as especially our own dictate a hands off policy toward Cuba. But in the name of patriotism a swarm of little men are stirring a war spirit to grind their petty axes, the Republicans led by Keating of New York to give them an issue in the coming elections, the newspapers to pep up circulation with incendiary headlines and stories. As we write the President has just summoned Congressional leaders to the White House and issued a statement drafted carefully to allay alarm, but next morning even newspapers as responsible as the *Washington Post* and the *New York Times* distorted the meaning of Mr. Kennedy's words, the former with an 8-column screaming headline, "Kennedy Warns Cuba on Aggression," the latter with a news story which lent a belligerant cast to words intended to stop thoughtless panic. We give the heart of them here because we were sure they would be buried or forgotten in more sensational, smaller and less scrupulous papers around the country.

The Words The Presses Blurred

The President said, *"There is no evidence of any organized combat force in Cuba from any Soviet bloc country; of military bases provided to Russia; of a violation of the 1934 treaty relating to Guantanamo; of the presence of offensive ground-to-ground missiles; or of other significant offensive capability either in Cuban hands or under Soviet direction and guidance."* But these clear words were blurred in the reporting. They were, by the standards of city editors, neither "hot" nor "new." Though the President said pointedly that Cuba's new ground-to-ground missiles had a slant range of 25 miles (as compared with the 90 miles to Florida), the headlines played up his later words about not allowing Cuba "to export its aggressive purposes," and the *New York Times* headlined, "Kennedy Pledges Any Steps to Bar Cuban Aggression." The idea that this little besieged island of 6,000,000 people, its shores constantly patrolled by U.S. planes and ships, with a powerful US base directly on its soil, may be threatening attack would be a joke if our country were not already half gone into a mood of overheated frustration. The President will have to speak more strongly, with no counter-balancing rhetoric, if he is to stem the tide toward war. He will have to take the offensive and label the Republicans the war party or he may find himself dragged along defensively by the tide.

Now is the time for every element of sanity in our country to speak up and help Mr. Kennedy stem the drift. The truth is that we are guilty of aggression against Cuba, of economic aggression in clear violation of Inter-American treaties, and of allowing hostile action in violation of our own neutrality laws by Cuban exiles, the CIA and our military. That uproar a few days earlier about shots fired on American planes had the distinct smell of a highly exaggerated war provocation. In any case how would we feel if Cuban reservists were allowed to practice air patrols 15 miles off the Florida coast with radar and electronic gear for intelligence purposes? It would suit Moscow perfectly if we were to do a Hungary in Cuba. It would hurt Russian interest most and help ours in Latin America if we were to reverse our Cuban policy, send the Peace Corps there to help its people, negotiate resumption of sugar purchases and oil sales. We would thereby make Cuba less dependent on Moscow and demonstrate for all the world to see that our policy was not made by sugar and oil companies, and that U.S. imperialism was a thing of the past.

If so wise and noble a magnanimity is politically impossible then the Administration would do best quietly to cancel that "shoot back" order to our planes and ships around Cuba. Too many trigger-happy elements are present on both sides. We should instead withdraw our ship and plane patrols. We would never stand for so continuous and hostile a challenge off our own shores even if theoretically beyond an obsolete 3-mile limit. To keep this up is to invite the spark that could set off a conflagration.

Noon, Sept. 5

Voices of Reason

"The Kennedy Administration has to be guided by . . . realities, not by passion, and least of all by fear and hysteria. The Soviet bloc is 7,000 and more miles away; Cuba is 90 miles off the Florida coast. If there is going to be a nuclear war it will not come from Cuba . . . to invade Cuba under the present circumstances would . . . be the course of irrevocable folly."

—New York Times, Sept. 1.

"What kind of quivering mentality is it that fears Castro as a threat to the United States? . . . The U. S. has several thousand technicians in Turkey, on the border of the Soviet Union, and Senators find nothing in that to warrant any alarm by the Russians. . . . To suggest that the presence in Cuba of Soviet technicians —not combat troops, but only technicians, according to the President's assurance—is somehow different from the basing of U.S. military advisers and Air Force and CIA units in Turkey is hypocritical."

—San Francisco Chronicle, Aug. 31.

". . . we should remember that we maintain and insist upon the right to maintain military bases or forces in countries bordering the Soviet Union. If we assert the right to do this in 1962, and we certainly have the right, it is difficult for us to see how the Monroe Doctrine of 1823 can rationally be invoked now to deny a similar right to Russia in the case of Cuba."

—Washington Evening Star, Sept. 4.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Neither US Nor USSR Prepared to Take Slight Risks for A Test Ban . . .

We hope the tenth Pugwash conference in London will take up seriously President Kennedy's invitation to "explore fully and objectively the basic reasons for our failure thus far to reach agreement" on the nuclear test ban. A committee of scientists from the non-nuclear powers could focus attention on the real reasons for the stalemate. My latest visit to Geneva, discussed in last week's issue, and what I have learned since on returning to Washington convinces me that neither the U.S. nor the U.S.S.R. is disposed to take the very slight risks involved for a new agreement. These risks are chiefly risks to the internal political prestige of the two rival leaders, Kennedy and Khrushchev. It's not in seismology but in anthropology that the difficulty originates, in the age-old arena of the psychological problems which arise when the leaders of two rival hordes face each other, fearful of the enemy in front of them and of any slip which might give an opportunity to potential rivals for leadership behind them.

Both K's Fear to Show Weakness

Both Kennedy and Khrushchev realize the danger. Both would like an agreement to end tests. But both would like the agreement to be a triumph for themselves and their own terms, and neither is disposed to risk his leadership on concessions which offend the deep-rooted biases on either side, one which sees inspection as espionage and the other which sees any agreement as a contest in cheating that requires constant policing if it is to be observed. Particularly neither is disposed to make concessions which may be taken as signs of weakness when they are feeling each other out in Berlin and Cuba.

Last week we discussed the pitfalls in the U.S. offer to accept "internationally controlled national networks" to police a new agreement. This week we want to take up some recent Soviet statements and show how easily the Soviet Union could bring about an agreement, simply by accepting—not the U.S. terms—but the principle of obligatory inspection when and if a non-political international commission monitoring tests from outside the territory of two big powers decided that such inspection was necessary to determine the nature of a suspicious event.

Not So Business-Like Communists Nor So Workman-Like Capitalists

"It has been amusing during the debate to hear how often the socialist countries talk about the need to proceed with our work in 'a business-like manner' while the other side seems to prefer the phrase 'a workman-like attitude.' Whatever might be the explanation of this difference in vocabulary, we rather regret that so little of either a business-like or a w manlike approach has been prevalent in the deli erations on a test ban."

—Mrs. Myrdal (Sweden) at Geneva arms parley Aug. 1

We want to call attention to two interesting arguments made by the Soviet representative, Kuznetsov, at Geneva on August 17 which deserve more attention than they received. The first was his argument that national detection systems had proven their efficacy in the period 1959-61 when there was no testing. "In the course of this period," Kuznetsov said, "not one misunderstanding or dispute arose. No one took one of the earthquakes which occurred during the period for a clandestine nuclear explosion." This is true, and it indicates that each side has enough non-seismic means of intelligence to supplement seismographic detection and distinguish an earthquake from a nuclear explosion. The argument shows how little need there is either for international listening posts on each other's soil or for on-site inspection.

But the argument cuts both ways. If national networks worked that well during the last moratorium, would there not be even less likelihood of confusion arising in a new moratorium policed by an international commission as suggested by the neutrals and with the improved equipment now available? The chances of a demand for an on-site inspection would be very slight, and an offer by the Soviet Union to accept such an inspection if necessary would involve very little risk of the espionage it fears, a risk far outweighed by the dangers of an uncurbed nuclear arms race. Is this too much to ask in the cause of peace which Moscow proclaims as its own?

Now I want to go on to a second important point made by Kuznetsov in his speech. For the first time he developed the

Our Military Bureaucrats Turn Out to Be Victims of Their Own Arrogance in Space

In his testimony before House Appropriations on education, Admiral Rickover disclosed that he had been asked by one of his superiors to reduce the amount of radiation shielding in nuclear ships. He refused on the ground that he was dealing "with the genetic future of mankind." The official replied, according to Rickover, "that no one knew much about evolution anyway, and if we raised radiation exposures we might find that the resultant mutants were helpful." Rickover rejected this as "utter nonsense." One wonders whether similar pressure from military superiors explains why U. S. scientists were so quick earlier this year to dismiss warnings from scientists aboard that high altitude testing might have unforeseen and dangerous consequences.

It now appears that their reassurances were unfounded. "Nuclear Test Fouls U. S. Space Program" said a headline in Missiles and Rockets Aug. 27. The July 9 explosion created a new artificial belt of radioactivity which has damaged three satellites. At first it was said that the new belt would soon disappear. Now the AEC and the Defense Department admit, in a repellant little press release of Sept. 1 phrased to provide a minimum of information and a maximum of face-saving, that the new belt "may persist for many years."

It is pleasant to learn that our military bureaucracy is a victim of its own arrogance. The day before the new admissions, the Washington Star's able science writer, William Hines, disclosed that the Pentagon is worried about 24 secret military satellites. These carry cameras designed to work at about 300 miles above the earth "and 300 miles is well within the new belt's 'hot' region."

The whole truth is still being withheld. Example: the New York Times, **like other papers, in reporting the Sept. 1 release high-lighted its assurance that the new belt "will not constitute any hazard to manned satellite launchings." But it overlooked the rest of this sentence in the original which said, "that we have planned in the near future." Those alive to the arts of fakery as practiced by the Pentagon's public relations men will read this closely. The new belt may be no danger to the low level flights planned "in the near future." But what of later flights which would put astronauts high enough to be affected?**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

. . . Politics and Prestige, Not Seismology, Called the Real Stumbling Blocks

Soviet idea of how inspection by invitation under the international commission proposed by the neutrals would work. He said the commission would first carefully assess the facts, and then consult with the power on whose territory the suspicious event had occurred to determine "what further measures of clarification, including verification *in loco* [i.e. on-site inspection] would facilitate the assessment." The State involved, pledge as it would be, he said, "to give speedy and full cooperation," might wish to clear itself of all possible doubt and might want to invite the commission" to make an on-site inspection.

Embarrassing Not to Invite

Kuznetsov went on to picture the pressure which the international commission could exert to force an invitation. "If it [the State suspected] did not invite the commission," Kuznetsov said, "then the commission—as stated in the memorandum of the eight neutrals—would inform the parties to the treaty of all the circumstances of the case . . . and world public opinion that the nuclear power concerned on whose territory the event had occurred refused to invite the commission to assess the nature of the event. . . . The State concerned would have to weigh up what the other States would think and the reactions of public opinion. . . . It is evident," he continued, "that these are very serious matters for any nuclear power to take into consideration. In the light of all these considerations, "Kuznetsov asked, "can one conclude that the nuclear powers will always adopt a negative attitude on inviting a commission to visit their territory?"

Obviously under such circumstances if an on-site inspection were refused, public opinion would support the other side in assuming that the treaty had been violated. As Mr. Lall of India was quick to point out this narrows the real difference between the two sides. On the one hand, if a power did break the treaty and were caught cheating, it would not allow an on-site inspection even if that were provided for in the treaty. The cheating power would have lost its gamble and testing would resume.

On the other hand, under this system of invitation, the refusal to invite an international scientific body to inspect would create such justifiable suspicion as also to end the testing ban. The difference in reality is not great, and either side if it wanted a treaty could adopt the other's formula. We could accept the invitation principle. By the same logic, the Russians could accept the obligatory on-site inspection rule. It would involve little more concession on their part than the invitation idea. But neither their government nor ours wants an agreement badly enough to bridge this minor difference. In each case the domestic opposition would attack this minor practical difference as a matter of principle and use this in the internal struggle for power. Each side also fears that whoever gave the last inch would appear to be weak and knuckling under, the Soviet Union to the principle of obligatory international inspection, the United States to the idea of inspection by invitation only. What really is at stake is leadership prestige at home and national prestige abroad.

The Pugwash parley could also perform a service in focussing attention on the unwillingness of either the Russians or the Americans to lift secrecy from seismology as their contribution to a nuclear test agreement. But this must be left for explanation next week.

Why Mavericks (Like Us) Are Needed

"Free societies depend on lay criticism. . . . Before the people can demand remedial action, they must first discover existence of defects in the status quo. When the defects exist in powerful public agencies the impetus for reform necessarily must come from outside. Such agencies rarely generate self-reform; their hierarchic organization effectively prevents this. Hence democracies depend on individual criticism. This is the reason why freedom of speech and a free press are important. It is through them that the public is made aware of problems that must be remedied. Otherwise, public agencies would be able forever to hide the truth from the American people by setting up a screen fashioned of slogans, cliches and illusions designed to project a favorable image of the agency and to bury its shortcomings. This sort of thing has become a fine art with public relations staffs."

—Admiral Rickover's testimony on education before House Appropriations Committee, released Sept. 3.

Fallout Hazards Beautifully Fogged Up By Federal Radiation Council Chairman

The Joint Committee on Atomic Energy has released an exchange of letters between HEW Secretary Celebrezze, in his capacity as chairman of the Federal Radiation Council, and Chairman Holifield of the Joint Committee and Chairman Price of its Subcommittee on Radiation. The purpose of the letters sent by Holifield and Price was to determine whether the Federal Radiation Council's so-called "Radiation Protection Guides" applied to fallout, especially Iodine-131. The replies signed by Celebrezze are models of foggy bureaucratic prose which leave the whole situation beautifully confused.

It appears that the FRC safety standards were not intended to cover fallout but "can be used as an indication of when there is a need for detailed evaluation of possible exposure hazards." This evaluation however will not be made by the FRC which "believes that individual fallout situations require individual evaluation." But the individual in evaluating his fallout must take "national security considerations" into account. Presumably, Geiger counter in hand, he will first come to Washington and consult the Joint Chiefs of Staff.

While the FRC's Radiation Protection Guides" have some relevance," they were never intended to be "a dividing line between safety and danger." Indeed one wonders why the FRC alarmed the country at all by establishing these "guides" since Mr. Celebrezze concludes hopefully by saying "we do not believe there is any risk of a major health hazard until exposure levels are many times above the guide levels."

Holifield and Price asked about the situation in Utah where Iodine-131 levels went so high in July that dairy herds were switched from fresh pasturage to stored feed and fresh milk diverted to butter, cheese and other products to allow time for the decay of the radioactive iodine. Mr. Celebrezze replied in a letter of Aug. 29 that "premature action has been taken in some areas to reduce the intake of Iodine-131, which action the Council would not have recommended under its interpretation of the Guides." This is not consistent with an HEW release of Aug. 17 which praised the milk industry for its action in Utah and said it was "based upon the radiation exposure guidelines recommended by the Federal Radiation Council." We hope Mr. Celebrezze will not be allowed to get away with these evasions and inconsistencies.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Disciple of Holmes and Brandeis Weakened the Bill of Rights They Defended

The Test That Mr. Justice Felix Frankfurter Failed

Holmes and Brandeis go down in history as champions of fundamental liberties but their young friend and disciple, Mr. Justice Frankfurter, found some rationalization on most occasions to excuse restrictions of basic rights. Their eloquence made the Bill of Rights stronger. His sophistry weakened it. This, and not the tender encomiums that attend his retirement, will be history's verdict.

To leaf back through the opinions Mr. Justice Frankfurter wrote in his 23 years on the Supreme Court is to feel respect for their quality and to take pleasure in their dialectic. He served the law with love and brought a teacher's zest to the tasks of adjudication. But the net effect is that of a Pontius Pilate, who is constantly letting execution proceed while exculpating himself with the doctrine of judicial restraint.

Basic Attitude Quickly Evident

The extraordinarily consistent pattern of his work on the Court made itself evident soon after his appointment. In the Gobitis case in 1940 he upheld the expulsion of Jehovah's Witnesses' children from school for refusing on religious grounds to salute the flag. His basic posture as a judge may be seen in that opinion and in his dissent two years later when the Court, speaking memorably through Mr. Justice Jackson, reversed *Gobitis*.

Mr. Justice Jackson's decision *(West Va. v. Barnette)* has taken a place among the noblest affirmations of America's truest faith while Mr. Justice Frankfurter's dissent is a queasy effort to equate acquiescence in infringement of the First Amendment with judicial tolerance of social experimentation in the various States.

Holmes and Brandeis long protested use of the due process clause by judges to read their own preconceptions into the Constitution in order to block social reforms. But the basic freedoms of the mind and person are not on the same plane constitutionally with the rights of property. The latter may be diminished if the procedure is fair and taken over altogether if the compensation is just. But the First Amendment forbids any restriction on the freedoms of speech, press and assembly, or any establishment of religion. The Constitution was never intended to allow experiment in the abridgement of intellectual and spiritual liberty. Here judicial restraint passes over into abdication. Where it is a Judge's duty to act, restraint becomes dereliction.

Mr. Justice Frankfurter tended to read the First Amendment as if it were as vague as the due process clause, and to infer from the existence of such marginal restrictions as libel and obscenity that almost any restriction on speech might be constitutional if "reasonable" and if "balanced" by other considerations of public policy. The unambiguous language of the First Amendment dissolved under this skilful exegesis, and opened the way for easy acceptance of the infringements which marked the cold war.

Among the Monstrosities He Upheld

In 1950 he joined with the majority in upholding the Taft-Hartley oath provisions, though with an uneasy dissent where they covered belief as well as Communist membership. In 1951 he was with the majority which validated the Smith Act, our first peace-time sedition statute since the Alien and Sedition Laws of John Adams. In 1956 he wrote the decision affirming the constitutionality of the Compulsory Testimony Act, and last year the 5-to-4 decision declaring constitutional the registration provisions of the Internal Security Act. He joined in the 5-to-4 decision upholding the powers of the House Un-American Activities Committee in the Barenblatt case. These mark the major lapses of our time.

The unspoken premise of these rulings was that the character of the Communist menace justified unusual abridgement of basic liberties. But the menace of the day—whether it be the divided loyalties of the Francophiles in the 1790s, the inflammatory speeches of the abolitionists in the 1850's or the bomb outrages of the anarchists a half century later—always seems special to contemporaries who falter in their reliance on the therapy of free debate. Holmes and Brandeis saw this clearly in the 20's as Black and Douglas have in our time. This is the test Frankfurter failed.

Why Not Send That Youngster Off to School With A Sub to the Weekly and Ensure His Education?

I. F. Stone's Weekly, 5618 Nebraska Ave., N. W. Washington 15, D. C.

Please renew (or enter) my sub for the enclosed $5:

Name .....

Street .....

City .....**Zone**.....**State**.....

9/10/62

Enter gift sub for $2 (6 mos.) or $4 (1 yr.) additional:

(To) Name .....

Street .....

City .....**Zone**.....**State**.....

Shall we send gift announcement? **Yes** ☐ **No** ☐

I. F. Stone's Weekly
5618 Nebraska Ave., N. W.
Washington 15, D. C.

NEWSPAPER

Second class postage paid at Washington, D. C.

I. F. Stone's Weekly. Second Class Postage Paid at Washington, D. C. Published every Monday except during August and the last Monday in December and the first in January at 5618 Nebraska Ave., N. W., Washington, D. C. An independent weekly published and edited by I. F. Stone; Circulation Manager, Esther M. Stone. Subscription: $5 in the U. S.; $6 in Canada; $10 elsewhere. Air Mail rates: $15 to Europe; $20 to Israel, Asia and Africa.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED